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March - 3 Justice Davis

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 168.

HORATIO N. SPENCER, APPELLANT,

VS.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 28, 1874.

" —— " —— Goes back for further finding —

" —— " ——

Affirmed

Chief Justice to write

SUPREME COURT OF THE UNITED STATES.

No. 168.

HORATIO N. SPENCER, APPELLANT,

vs.

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1 Court of Claims of the United States.

H. N. SPENCER
vs.
THE UNITED STATES.
} No. 3161. Filed March 31, 1868.

Petition.

To the honorable United States Court of Claims:

The petition of H. N. Spencer, a citizen of the United States, residing in Port Gibson, Claiborne County, in the State of Mississippi, showeth:

That in the month of January, A. D. 1864, the petitioner was the owner of forty bales of cotton, and in possession thereof, raised and stored on his plantation, called the "Highland Place," in Carroll Parish, State of Louisiana.

That in said month of January, A. D. 1864, the said cotton was seized and carried away from his said plantation by force and against his will, and delivered to one Yeatman, an agent of the Treasury Department, at Memphis, Tennessee, and the same sold by him, and the net proceeds thereof paid into the Treasury of the United States.

Your petitioner avers that he is informed and believes that the amount realized from the sale of the said cotton was, in net proceeds, six thousand six hundred and twenty-eight dollars, ($6,628,) and the same paid into the Treasury of the United States.

Your petitioner avers that no part of said cotton or the proceeds thereof was appropriated in any way to the use of the Army or Navy of the United States, nor was it ever abandoned or forfeited or liable to seizure under any act of Congress in that behalf provided, and that it was not liable to seizure under the usages of war, and that no proceedings for the purpose of condemning said cotton have ever been instituted before any court or tribunal.

2 Your petitioner avers that he is unable to state the precise amount for which said cotton was sold, or the expenses attending the seizure, shipment, transportation, and sale thereof, but the same was of the value of about one hundred and sixty-five dollars ($165) per bale, and would have netted in his hands the sum of six thousand six hundred and twenty-eight dollars, ($6,628;) and he believes that the said amount was received by the agents of the Treasury Department on the sale thereof, and that the same was paid into the Treasury of the United States.

Your petitioner further avers that his property aforesaid having been taken possession of by the United States Government, and appropriated by it, an implied contract has arisen to make your petitioner just compensation therefor, by paying all said cotton was reasonably worth at the time and place it was so taken from him as aforesaid; and he avers that said cotton was worth at the time of seizure one hundred and sixty-five dollars ($165) per bale, which, under the implied contract aforesaid, he is entitled to receive from the United States.

Your petitioner further shows that if there has been a lawful and valid capture of said cotton, which he denies, but which he understands is asserted by the United States, then he is nevertheless entitled to receive the net proceeds thereof, amounting, as aforesaid, to the sum first above mentioned of six thousand six hundred and twenty-eight dollars, ($6,628,) under the provisions of an act of Congress entitled "An act to provide for the collection of abandoned property and for the prevention of fraud in insurrectionary districts within the United States."

And your petitioner further avers and shows that he has never in any manner encouraged and abetted or given aid or comfort to the rebellion or to the enemies of the Government of the United States, but on the contrary has always borne true allegiance and faithful support to said Government.

HORATIO N. SPENCER,
By B. D. WHITNEY,
Attorney in fact.

3 Benjamin D. Whitney, of Washington City, above-named attorney in fact for the said H. N. Spencer, being duly sworn, deposes and says that said H. N. Spencer is the claimant named in the foregoing petition; that no assignment or transfer has been made; that the said H. N. Spencer is justly entitled to the amount as above claimed from the United States, subject to any just and lawful deductions; and that the facts stated in the foregoing petition are true according to the best of his knowledge, information, and belief.

B. D. WHITNEY.

Subscribed and sworn to before me, the undersigned, this 23d day of March, A. D. 1868.

JOHN RANDOLPH,
Assistant Clerk of Court of Claims.

C. CUSHING,
Petitioner's Counsel, Washington, D. C.

4 In the United States Court of Claims, December term, A. D. 1868

H. N. SPENCER
vs.
THE UNITED STATES.
} No. 3161.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to said claimant in the sum of six thousand six hundred and twenty-eight dollars, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has, at all times, borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

T. LYLE DICKEY,
Assistant Attorney-General.

And for a further plea to the said petition the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer his claim to the proceeds" of the property mentioned and described, in the Court of Claims, as provided by the 3d section of the act of Congress approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

T. LYLE DICKEY,
Assistant Attorney-General.

And for a further plea to the said petition the said defendants say, that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant, at the time of the filing of his said petition, was an alien, and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents therein set forth, were made and done in the administration of, and in virtue and under color of, the act of Congress entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

Whereby, and by virtue of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the Government, and for the better defence of the Treasury against unlawful claims," approved July 27, 1868, the claimant is barred of his said action against the defendants.

T. LYLE DICKEY,
Assistant Attorney-General.

Filed July 19, 1869.

5 In the Court of Claims.

HORATIO N. SPENCER
vs. } 3161.
THE UNITED STATES.

At a Court of Claims held at the Capitol, in the city of Washington, the 24th day of March, A. D. 1873, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said claimant take nothing by his suit and that his petition be dismissed.

6 In the Court of Claims of the United States.

HORATIO N. SPENCER
vs. } No. 3161.
THE UNITED STATES.

Now comes into open court George Taylor, attorney for claimant, and moves for an appeal from the decision in this case to the Supreme Court of the United States, June 4, 1873.

GEORGE TAYLOR,
Atty. for Claimant.

Filed June 4, 1873.

Ordered, that the appeal be allowed as prayed for.
By the court.
JUNE 4, 1873.

7 United States Court of Claims.

H. N. SPENCER
vs.
THE UNITED STATES.

MILLIGAN, J.:

This suit is prosecuted to recover the proceeds of one hundred and eight bales of cotton, alleged to have been seized, under the authority of the United States, on the claimant's plantation at Bunche's Bend, in the parish of Carroll, Louisiana; and the court find the facts to be:

In the year 1862 there were raised, on the claimant's plantation known as "Highland Place," in Carroll Parish, Louisiana, by his own hands, and under the management of his overseer, James D. McCorkle, about three hundred and ninety bales of cotton. The overseer left the plantation on the 12th of February, 1863; and before he left he had ginned about two hundred and forty bales, two hundred of which had been baled and removed to a cane-thicket for safety. These two hundred bales were afterward discovered by the rebels and burned. The forty bales of ginned cotton were baled after the overseer left, and removed by the foreman and hands to Mrs. Blackburn's, which has been sued for in another action by claimant.

In March, 1863, three men by the name of Wagley, Kellogg, and Brown came to the place and employed the claimant's colored hands still remaining on the plantation to assist them to gin and bale the said cotton still left on the plantation. They ginned and baled about one hundred and eight bales, which were hauled by these men to the river, and there placed on a steamboat and shipped up the river.

W. C. Wagley, who was one of the party that took the cotton, as it appears, had, at that time, a contract with I. G. Klinck, assistant quartermaster, acting for the United States, by which he agreed to turn over to Wagley such fields of cotton as may be designated that are not picked, and to furnish to him such contrabands as could be conveniently spared, &c., for the purpose of aiding him in picking, ginning, and baling the cotton for market; and for which Wagley was to give to the United States one-half of the cotton thus picked, ginned, and baled for the other.

The cotton claimed in this suit, although not within the terms of the contract, was ginned and baled by Wagley, hauled to Lake Providence, and thence shipped to Thomas H. Yeatman, special agent Treasury Department, at Memphis, Tennessee, where one hundred and six bales, with other cotton collected by Wagley, appear to have been sold by Yeatman, and the net proceeds of fifty-three bales paid into the Treasury; which we find averaged, after deducting all charges, $85.77 per bale, amounting to the sum of $4,545.81, for which judgment will be entered.

Filed March 24, 1873.

8 United States Court of Claims.

H. N. SPENCER
vs. Filed March 24, 1873.
THE UNITED STATES.

MILLIGAN, J., delivered the opinion of the court:

The claimant seeks to recover the net proceeds of forty bales of cotton, which he avers in his petition were taken from his plantation in Carroll Parish, Louisiana, in 1864.

The court finds the facts on which the case rests to be as follows, viz:

1. The claimant was the owner of the plantation known as "Highland Place," in Carroll Parish, Louisiana, and on which the forty bales of cotton, claimed in this action, were raised with his own hands in the year 1862.

2. The crop of 1862 amounted to about three hundred and ninety bales, two hundred and forty of which had been ginned by the overseer, and two hundred compressed into bales, which were removed to a cane-thicket for safety, where they were afterward discovered and burned by the rebels.

McCorkle, the overseer, left the plantation in February, 1863, and one James Bland, who was foreman, appears to have taken control. Some short time after McCorkle left, Bland and the colored men on the place compressed the remaining ginned cotton into forty bales, leaving about one hundred and fifty bales of seed-cotton in the gin-house, and hauled the forty bales, now in suit, out to Mrs. Blackburn's, as the witnesses say, "to save it for their old master, who had been kind to them." It was stored in Mrs. Blackburn's back yard, and she promised to take care of it. But, contrary to her promise, some time after she shipped it up to Memphis, Tennessee, where it fell into the hands of Thomas H. Yeatman, special agent of the Treasury Department.

3. The cotton appears to have been in bad condition when it reached Memphis, where it was rebaled, and compressed into thirty-five bales, which were afterward sold by Thompson & Co. at public auction, by order of the special agent of the Treasury Department, Yeatman, and the net proceeds, amounting to $6,628.49, paid over to Yeatman, for which he executed his receipt.

4. In the mean time the colored men on the plantation, hearing of this movement of Mrs. Blackburn, followed the cotton to Memphis, and there claimed it as their property, and the special agent of the Treasury, Mr. Yeatman, wrote as follows to the Secretary:

"CINCINNATI, *January* 2, 1868.

"DEAR SIR: Your communication of 22d October last, referring to Mrs. Blackburn's forty bales of cotton, would have been answered sooner, had it not been for the indisposition of Mr. Thompson, the warehouse agent, who had charge of the cotton, and also the desire to get a letter from Mr. Lacy, the agent of Mrs. Blackburn. The cotton of Mrs.
9 Blackburn in question never was formally seized by any agent of
the Government, but temporarily detained, more on account of complaint of some negroes who said the cotton had belonged to them, and they were forced to sell the same to Mrs. Blackburn at a price quite below the market-value. These facts were made known to General Superintending Agent Mellen, and it was agreed, after a consultation with him, by her and her agents, to allow the negroes the further sum of $2,000. This money was detained out of the proceeds of the cotton, which was directed to be sold by Mrs. Blackburn and agents, and by me paid over by Mr. Mellen's order to my successor in office, J. M. Tomeny, whose receipt I hold, who in turn was ordered by Mr. Mellen to send the same to Treasury Agent McFarland, at Goodrich Landing, to be paid to the negroes claiming.

"I further state that I never sold any cotton regularly taken possession of by me as Treasury agent, unless so authorized by the Secretary of the Treasury or the Superintending Agent Mellen, and, as before stated in regard to this particular lot claimed by Mrs. Blackburn, it was only temporarily detained on complaint of the negroes for want of a fair consideration, all the facts being made known to Mr. Mellen; the matter, as before stated, was settled by Mrs. Blackburn agreeing to pay the further sum of $2,000.

"While this negotiation was going on, Mr. Thompson, who had possession of the cotton, rebaled the same at the instigation of Mrs. Blackburn and agents, Lacey, Able & Co., reducing the number of packages to thirty-five bales, and gave them full control of it after the above compromise was made, to wit, the cotton was sold by their order, through me, the $2,000 retained, and the balance of the proceeds paid over to Mrs. Blackburn and agents, as per receipts filed.

"Very respectfully, yours,

"THO. H. YEATMAN,
"*Late Special Agent Treasury Department.*

"Hon. HUGH MCCULLOCH,
"*Secretary United States Treasury.*"

5. Out of this sum of $6,628.49, $2,000, less $184, paid to one Munson, and $100 to Creed Bland, was, on the 24th of May, 1864, paid, under the direction of W. P. Mellen, superintendent special Treasury agent, to nineteen colored men belonging to the claimant's Highland Place, and their joint receipt taken therefor.

The remaining $4,628.49 were paid by Yeatman to Mrs. Blackburn's attorneys, who executed the following receipt:

"Received of Thomas H. Yeatman, assistant special agent of the Treasury Department, Memphis, February 10, 1864, the sum of four thousand six hundred and twenty-eight $\frac{49}{100}$ dollars, in full of all demands of forty bales of cotton purchased by Mrs. C. A. Blackburn from the negroes on the Spencer Plantation, near Lake Providence, Louisiana. Said cotton was shipped by her order to Lacey, Able & Co., and seized by the Government official at Memphis, and the above is in full of compromise, the negroes being allowed fifty dollars per bale.

"FOSTER, GREGOR & CO.,
"*Attorneys for Mrs. C. A. Blackburn.*"

The facts of this case, which are drawn out with some particularity, forcibly illustrate the loose and reckless manner in which the Treasury agents and others charged with the duty of collecting "abandoned or captured property" executed the laws of the United States under which they claimed to act. Their conduct was not only often rude, but in
10 many cases without authority of law, and the injuries thus done to private rights wholly irreparable. The law authorizing the capture of private property on land was of itself severe enough, but it lost much of the dignity of law, and more of its justice and beneficence, in the hands of irresponsible officers and agents intrusted with its administration.

In the case now before us, it is plain that the claimant's title to the cotton claimed in the petition was never divested, and that the Treasury agent at Memphis either knew this fact, or had the means of knowing it fully before him. But he chose to disregard it, and to deal with it as belonging to Mrs. Blackburn and the colored men on the plantation where it was produced, neither of whom, as it appears in this record, ever had the shadow of right to a single bale of it.

But the wrong and injury to the claimant did not stop with the special Treasury agent at Memphis. After he had ordered its sale, and received and receipted for its proceeds in his official capacity, and was therefore bound by law to pay them into the Treasury of the United States, the general supervising agent, Mellen, assumed to direct the application of the proceeds of the sale contrary to law; and through Yeatman, with Mellen's sanction, every dollar of the money, except the necessary costs and charges, was paid, on a sham compromise, to those who had no legal interest whatever in the fund.

The Treasury as well as the lawful owner of the property were thus defrauded of the proceeds of its sale. And now this suit is instituted to hold the United States responsible for the loss of the fund. Can it be done? Ordinarily the rule of law is that, in cases of public agents, the Government or other public authority is not bound, unless it manifestly appears that the agent is acting within the scope of his authority, or he is held out as having authority to do the act, or is employed in his capacity as a public agent to make the declaration or representation for the Government.

"This rule seems indispensable," says Judge Story, "in order to guard the public against losses and injuries arising from the fraud, or mistake, or rashness and indiscretion of their agents. And there is no hardship in requiring from private persons dealing with public officers the duty of inquiry as to their real or apparent power and authority to bind the Government." (Story on Agency, § 307 *a*; also Bennett, Van Pelt & Co.'s case, 6 Ct. Cls. R., p. 103.)

The agents of the Treasury, appointed under the act of March 12, 1863, are declared by the act itself to be special agents, and they are clothed with specific powers only. They have no general powers. The law imposes on such agents the special duty of receiving and collecting all abandoned or captured property, and of appropriating it to public use on due appraisement and certificate thereof, or to forward it to a place of sale within the loyal States, as the public interest may require, and there sell it at auction to the highest bidder, and pay the proceeds thereof into the Treasury of the United States.

The statute is the warrant of the power of such agents, and they transcended its scope whenever they assumed to surrender abandoned or captured property which had come into their hands, or to distribute its proceeds after sale to those claiming them. Their plain duty, under the law, was to pay such proceeds into the Treasury, where they would have safely remained, until the claimant could have asserted his right thereto through the instrumentality of this court. The law provided no other means than the Court of Claims by which any part of the money derived from the sale of captured and abandoned
11 property could be reclaimed, and through it only after a judicial determination of the claimant's title to the property when seized, and his right to the proceeds of the sale thereof in the Treasury.

But these plain duties have not been discharged in this case; and whether or not the Treasury agents implicated in this fraud are not responsible on their bonds, is a question with which we have nothing to do. It is certain the Government of the United States is not answerable to the claimant for the proceeds of his property, which never reached the Treasury, unless we overrule the established doctrine that governments, or other public authorities, are not responsible for the losses or injuries arising from the fraud, or mistake, or rashness and indiscretion of their agents. This we have no power or disposition to do; for the Supreme Court, in the case of Lee vs. Munroe, (7 Cranch R.,

p. 366,) have recognized this principle as the doctrine of the United States.

In holding the claimant not entitled to recover on the facts of this case, we do not intend to trench upon the decisions of this court heretofore made, in which we have recognized the claimant's right to recover after he had lost possession and control of his property, through the seizure of the defendant's officers or agents charged by law with the duty of collecting abandoned and captured property, but could not trace the proceeds of the sale of such property specifically into the Treasury. The law in such cases, as we held in Silvey's case, (4 Ct. Cls. R., p. 490,) and Henry's case, (6 Ct. Cls. R., p. 389,) presumes that the officers and agents of the Government charged by law with the care and custody of such property discharged their whole duty, and that the property was sold and the proceeds regularly paid into the Treasury.

But this doctrine rests on a legal presumption, which, like all other presumptions, may be rebutted; and here it is rebutted, and directly shown that the proceeds of the claimant's cotton never reached the Treasury. His right of action, therefore, never accrued under the "abandoned and captured" property acts. This right is contingent upon the proceeds of the sale of such property reaching the Treasury, and can only be enforced against the United States after such proceeds have either actually or constructively been paid into the Treasury. (Anderson's case, 9 Wal. R., p. 56.) The petition is dismissed.

12 In the Court of Claims.

Horatio N. Spencer
vs.
The United States.
} No. 3161.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the claimant's solicitor for the allowance of an appeal, as filed in the clerk's office June 4, 1873, and of the order of the court allowing the same, of the finding of facts and conclusion of law, and the opinion of the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 14th day of October, A. D. 1873.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 168. Horatio N. Spencer, appellant, vs. The United States. Court of Claims. Filed 28 April, 1874.

○

Supreme Court of the United States.

OCTOBER TERM, 1875.

No. 168.

Horatio N. Spencer, Appellant,

vs.

The United States.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF APPELLANT,

By GEORGE TAYLOR.
JOSEPH CASEY.

Judd & Detweiler, Prs.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

No. 168.

HORATIO N. SPENCER *vs.* THE UNITED STATES.

Appeal from the Court of Claims.

APPELLANT'S BRIEF.

STATEMENT OF THE CASE.

The claimant, Horatio N. Spencer, was the owner of a cotton plantation in Carroll parish, Louisiana. This plantation was occupied by his hands and overseers; and in 1862 there was raised there 390 bales of cotton. Two hundred and forty bales had been ginned and baled, removed to a cane-break for safety, where they were found and burned by the rebels. The overseer left the plantation in February, 1863, and left matters in charge of one James Bland, a foreman. Bland and the negroes baled forty bales more of the cotton, and hauled it to Mrs. Blackburn's plantation, where it was deemed more secure. She promised to take care of it. Instead of doing so she shipped it to Memphis for the purpose of selling it as her own. Here it was seized by Thomas H. Yeatman, the special agent of the Treasury at that place.

The colored men on the Spencer place, hearing of Mrs.

Blackburn's movements, proceeded to Memphis, and there claimed the cotton as their property.

The cotton was shipped to Mr. Mellen, the supervising agent, and by him sold. The net proceeds were $6,628.49. Of this sum $2,000 were paid to Bland, the foreman, and the negroes, and the balance, $4,628.49, to the attorneys of Mrs. Blackburn. On these facts (pp. 4, 5, and 6 of Record) the Court of Claims dismissed the petition, rendering judgment in favor of the United States.

ERROR ASSIGNED.

On the facts as found by the Court of Claims, the judgment should have been for the claimant for the net proceeds of his cotton, $6,628.49, and not for the defendants.

ARGUMENT.

The judgment of the Court of Claims, as will be seen from the opinion, (pp. 7 and 8 of Record,) is predicated upon the legal propositions that the United States were not liable for the mistake of their agent and his diversion of the funds belonging to the claimant; and that the right to sue for such proceeds under the provisions of the act of March 12, 1863, was contingent upon them having been "*actually or constructively paid into the Treasury*" of the United States.

The positions we shall attempt to maintain in this argument, are the following:

I.

That under the facts of this case Yeatman & Mellen, in seizing and selling our property, and disposing of its proceeds, were acting " by virtue and under color " of the Captured and Abandoned Property acts.

II.

That in paying over to third persons the proceeds of the claimant's property, in good faith, but under a mistake of the law, and their power under it, they became liable to him for the same.

III.

That under the 3d section, act of July 27, 1868, the agents are exonerated, and their liability assumed by the United States, with jurisdiction conferred on the Court of Claims.

IV.

That to maintain this action, it is not necessary, under the facts found in this case, that the proceeds of the property should have been paid into the Treasury of the United States.

I. The rule of liability laid down in the opinion of the Court of Claims, (p. 7, Record,) as a general proposition, is indisputable. It is not controverted or denied by the appellants. But we at the same time contend, that under the legislation of Congress, it has no application to the case at bar.

The act of July 28, 1866, section 8, 14 Statute, 329, provides—

> "That the provisions of the 3d and 4th sections of the act of March 3, 1833, (4 Stat., p. 632,) and the 12th sec. of the act of March 3, 1863, (12 Stat., 741,) 'shall be taken and deemed as extending to and embracing all cases arising or which may have heretofore arisen, and all suits and prosecutions heretofore brought and now pending, or which may hereafter be brought against any officer of the United States, or other person by reason of acts done, or proceedings had by such officer or other person under authority or color of the act approved' March 12, 1862, and July 2,

1864: *Provided*, That such acts done or proceedings had under the two last acts aforesaid, or under color thereof, shall have been done and had under the authority and direction of the Executive Government of the United States: *and provided further*, That when a recovery shall have been, or shall hereafter be, had in any such suit or prosecution brought, or which may hereafter be brought, as aforesaid, the payment of the amount recovered, as provided for in the said twelfth section of the act approved March 3, 1863, aforesaid, shall be made out of the moneys arising and obtained from the proceeds of sales, and leases and fees collected and paid over to the Government under the two acts approved March 12, 1863, and July 2, 1864, aforesaid, in relation to captured and abandoned property."

The 3d and 4th sections of the act of March 2, 1833, (4 Stat., 632,) referred to in this enactment, provide for the removal of suits against officers or agents of the United States for any alleged acts done by them in executing the revenue laws of the United States, from the State courts to the circuit courts of the United States, &c., and for the authentication of the records in those cases.

The 12th section of the act of March 3, 1863, (12 Stat., 741,) enacts:

"That in all suits or procedings against collectors or other officers of the revenue for any act done by them, or for the recovery of any money *exacted* by or paid to such officer, and by him paid into the Treasury of the United States, in the performance of his official duty, in which any district or other attorney shall be directed to appear on behalf of such officer by the Secretary, or Solicitor of the Treasury, or by any other proper officer of the Government; such attorney shall be allowed such compensation for his services therein as shall be certified by the court in which such suit or proceedings shall be had to be reasonable and proper, and approved by the Secretary of the Treasury; and where a recovery shall be had in any such suit or proceedings, and the court shall certify that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury."

In the 8th section of the act of June 25, 1868, it is provided, (15 Stat., p. 77, § 8)—

"That no person shall file or prosecute any claim or suit in the Court of Claims, or an appeal therefrom, for or in respect to which he, or any assignee of his, shall have commenced and has pending any suit or process in any other court against any officer or person who, at the time of the cause of action alleged in such suit or process arose, was in respect thereto *acting or professing to act*, mediately or immediately, under the authority of the United States, unless such suit or process, if now pending in such other court, shall be withdrawn or dismissed within thirty days after the passage of this act."

So intent does Congress appear upon relieving all officers under these laws who may have either exceeded or mistaken their authority, that they enact still more comprehensive and sweeping provisions, showing clearly that it was the meaning and intention of Congress that the United States should be alone responsible for such mistaken or unauthorized acts of these officers.

The following are the first and third sections of the act of July 27, 1868: (15 Stat., pp. 243, 244.)

"SEC. 1. That all the provisions of section eight of the act of July twenty-eight, eighteen hundred and sixty-six, entitled 'An act to protect the revenue, and for other purposes,' and the forms and modes by that section and the twelfth section of the act of March three, eighteen hundred and sixty-three, therein referred to, prescribed for prosecuting suits, withholding executions, and paying judgments against officers of the United States, or other persons engaged in executing the acts relative to captured and abandoned property, shall extend and be applied to all suits and proceedings (except those in behalf of the United States) which have been brought, or may hereafter be brought, against any officer or agent of the Government, civil or military, for acts done during the rebellion while acting by virtue or under color of his office or employment; and every defendant in such suit or proceeding having made full defense thereto, and having notified the Attorney General of the United States to appear and defend the same, shall be entitled to the full benefit and protection provided in said section for officers and agents of the Government engaged in the collection of the public revenue; and any defendant being aggrieved by any order or direction, ruling or judgment of any court made or had in any such proceeding, may except thereto and appeal therefrom to the Supreme Court of the United States, and have the questions arising there heard and determined.

* * * * *

"Sec. 3. *And be it further enacted*, That it is hereby declared to have been the true intent and meaning of the act approved March twelve, eighteen hundred and sixty-three, entitled 'An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States,' *that the remedy given in cases of seizure made under said act, by preferring claim in the Court of Claims, should be exclusive, precluding the owner of any property taken by the agents of the Treasury Department as abandoned or captured property, in virtue or under color of said act, from suit at common law, or any other mode of redress whatever, before any court or tribunal other than said Court of Claims*; and in all cases in which suits of trespass, replevin, detinue, or any other form of action may have been brought, and are now pending, or shall hereafter be brought against any person for or on account of private property taken by such person as an officer or agent of the United States, in virtue or under color of the act aforesaid, or the act approved July second, eighteen hundred and sixty-four, entitled 'An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection,' *the defendant may and shall plead or allege in bar thereof that such act was done or omitted to be done by him as an officer or agent of* *the United States, in the administration of one of the acts of Congress aforesaid, or in virtue or under color thereof; and such plea or allegation, if the fact be sustained by the proof, shall be, and shall be deemed and adjudged in law to be, a complete and conclusive bar to any such suit or action.*"

If there be any doubt as to the right of the claimant to maintain this suit under the act of March 12, 1863, standing alone, these subsequent acts must resolve and remove all such doubts. They give a very clear and distinct legislative interpretation to the acts of March 12, 1863, and July 2, 1864; and not only so, but they adopt and ratify the mistaken and unauthorized doings of their agents in the execution of these laws, and make them the acts of the United States. And this subsequent recognition and adoption will stand in the place of precedent authority, if such were wanting in the case.

The act of July 27, 1868, came under review in a case before the late chief justice in the circuit court for South Carolina, in 1869.

McLeod *vs.* Callicott, 10 Int. Rev. Record, pp. 94–5.

In charging the jury, Mr. Chief Justice Chase said, on this point:

"By an act, passed on the 27th day of July, 1868, Congress declared the intent of the several acts relating to captured property. Among these was the abandoned or captured property act of March the 12th, 1863, of which, as well as of the others, the true intent was declared to be that the remedy given in cases of seizure, by preferring claim in the Court of Claims, should be exclusive, precluding the owner of any property taken by agents of the Treasury Department, as abandoned or captured property, in virtue 'or under color of said act,' from suit at common law, or any other mode of redress whatever, before any other court or tribunal other than the Court of Claims. It will be for you to say whether the defendant in taking this property proceeded under color of that act. If he was proceeding in good faith, believing himself to be warranted as the officer of the national Government in taking charge of the cotton under that act, we think he is covered by its provisions. We adopt this view the more readily, because in a subsequent part of the act it is provided that in all cases in which 'suits of trespass' (which is this case) 'may have been brought, or shall hereafter be brought, against any person, for or on account of private property taken by such person, as an officer of the United States, by virtue of any act relating to captured or abandoned property,' and the defendant shall plead or allege in bar thereof that such act was done or omitted to be done by him as an officer of the United States in the administration of one of the acts aforesaid, or in virtue or under color thereof, such plea or allegation, if the fact be sustained by the proof, *shall be deemed and adjudged in law to be a complete and conclusive bar to any such suit or action.*

"It is our duty under this act to say to you that the plea of the defendant in this case is a conclusive bar to this action, if you find affirmatively that the acts of his complained of in the declaration were done by him in virtue or under color of any of the acts referred to. If it was done by him as supervising special agent under a mistake as to the character of this property, he is in our judgment protected by this act. *It would not protect the United States from a demand in the Court of Claims for this property, but it would protect the officer against the private suit, if he acted under color of this law, or under a mistaken sense of duty, though not in strict pursuance of law.*"

In the case of Buron *vs.* Denman, 2 Excheq. Rep., 188–'9, after holding that there was a subsequent adoption and ratification by the Queen's government of the unauthorized and illegal acts of Commander Denman, the question arose whether it was like the case of individual principals and agents, where a subsequent ratification and adoption of the act gave the aggrieved party a remedy against either or both —the principal and agent. But the court clearly holds that the act of the Crown absolves the officer, and left it alone responsible. Lord C. B. Parke says:

"If an individual ratifies an act done in his behalf, the nature of the act remains unchanged. It is still a mere trespass, and the party injured has his option to sue either. If the Crown ratifies an act, the character of the act becomes altered, for the ratification does not give the party injured the double option of bringing his action against the agent who committed the trespass, or the principal who ratified it, but a remedy against the Crown only, (such as it is,) and actually exempts from all liability the person who commits the trespass."

Best on Presumptions, p. 28, says:

"Every ratification has relation back to the time of the act done—*Omnis ratihabitio retrotrahitur et mandato equiparatur.*"

Many authorities on the same subject are collected in Potter *vs.* North, 1 Saund., 347 c; Mitchell *vs.* Harmony, 13 How., 115; The Rolla, 6 Robinson, 364. In this latter case, the question was as to the validity of an act done by a naval officer. Lord Stowell, in delivering the judgment, says:

"However irregularly he may have acted towards his own Government, the subsequent conduct of Government in adopting that enterprise, by directing the extension of that conquest, will have the effect of legitimating the acts done by him, so far at least as the subjects of other countries are concerned."

Lamb *vs.* Mills, 4 Mod., 378; Trevillian *vs.* Pine, 11 Mod., 112. The same doctrine has been fully maintained by this Court in the cases of Adams *vs.* The United States, 9 Wall., 554; U. S. *vs.* Child, 12 Wall., 232.

Congress alone can adopt and ratify the illegal acts of its agents.

Gibbons *vs.* The United States, 8 Wallace, 269.

In our case the adoption and ratification is stronger and more direct than in any of the cases cited. It is by solemn public statutes enacted by the legislative power of the nation, to whom the subject properly and appropriately belonged. It is a full, definite, express adoption, leaving nothing to inference or construction. And to doubly exclude any other conclusion, expressly forbids any suit to be brought against any one else than the United States, and forbids jurisdiction to any other court than that where the United States alone can be sued. Either this suit can be maintained, or the claimant is without remedy, here or anywhere else.

It was also adopted and ratified by the Treasury Department, especially in settling the accounts of the agents, and recognizing this payment.

The Secretary of the Treasury claimed and exercised the right for himself and his agents, under the captured and abandoned property acts, to adjudicate and determine the rights of individuals to the cotton seized or its proceeds. And in accordance with that view released many thousands of bales of captured cotton, and several millions of dollars of proceeds. The question was finally submitted to the Attorney General, and by him, on the 5th July, 1865, decided adversely to the power claimed by the Treasury Department.

See 11 Opinions Attorney Gen'ls, pp. 276–7.

If anything were wanting to show that Mellen and Yeatman were acting *under color of these captured and abandoned property acts*, in disposing of these proceeds, these facts should be conclusive.

Acting "*under color of a law*" is of course not the same as "acting in *virtue of a law*," because in all the statutes here quoted, they are put as cumulative grounds for granting immunity to the officer. So *title* and *color of title* are different. The right to an office, and color of office, are distinguished.

In all these cases the distinction is clear and palpable. To act under color of law is where an officer having a right to execute or act under a law, in good faith, performs an act which he believes to be within his powers, but which are unauthorized by the law.

A man enters under color of title when he comes in in good faith under a deed *purporting* to convey the title, but which does not. A man acts by color of office when he exercises its functions under an election or appointment which he believes confers the right to it, but in which belief he is mistaken.

"An officer *de facto* is one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law."

Lord Ellenborough, King *vs.* Com. of Bedford, 6 East., 369.
See also 1 Ld. Raymond, 660.
Plymouth *vs.* Painter, 17 Conn., 588, and the cases there reviewed.
The People *vs.* Hopson, 1 Denio, 579.
Commissioners *vs.* McKisson, 2 Rawle, 139.
McInstry *vs.* Tanner, 9 John., 135.
Tucker *vs.* Aiken, 7 N. H., 132.
Reynolds *vs.* Orris, 7 Cow., 272.
Tweed's Case, 16 Wall., 518, 519.

In Wright *vs.* Mattison, (18 How., p. 56,) this court defines what is color of title. Mr. Justice Daniel says:

"The courts have concurred, it is believed, without an exception, in defining 'color of title' to be that which in appearance is title, but which in reality is no title. They have equally concurred in attaching no exclusive or peculiar character or importance to the ground of the invalidity of an apparent or colorable title. The inquiry with them has been, whether there was an apparent or colorable title under which an entry or a claim has been made in good faith."

Gregg *vs.* Sarne and Wife, 8 Peters, 253.
Ewing *vs.* Burnett, 11 *Ibid.*, 41.
Pillow *vs.* Roberts, 13 How., 472.

In this last case the Court says:

"Statutes of limitations would be but of little use if they protected those only who could otherwise show an indefensible title to the land. Hence color of title *even under a void or worthless deed*, has always been received as evidence that the person in possession claims adversely to all the world."

On p. 59 the Court says:

"Good faith is doubtless used here in its popular sense, as the actual existing state of the mind, whether so from ignorance, scepticism, sophistry, delusion or imbecility, and without regard to what it should be from given legal standards."

Such was the view of what constitutes acting "*under color of these laws*," taken by this Court, in Tweed's case, 16 Wall., 518, 519, and by the late Chief Justice in the Callicott case, already cited.

The same view is held by Judge Blatchford in Britton *vs.* Butler, 9 Bl. C. C. Rep.

It must be evident, therefore, to the Court, from the construction and interpretation given to these captured and abandoned property laws by the Secretary of the Treasury, and his subordinates, at the time of these transactions, that Mellen and Yeatman were in good faith acting under color of these laws. That the very contingency contemplated by the act of July 27, 1868, and the acts to which it was in addition occurred in the transactions which makes the facts in the case at bar.

They were the regular officers *de jure* in charge of the affairs. They had the right to receive this cotton. They lawfully sold it, and converted it into money. Their superior officer and they claimed they had the right to adjudicate and release these proceeds under the law. There is no evidence of any fraud or intentional wrong. On the contrary, the presumption is the other way, and that they acted honestly and in good faith. But they were mistaken as to the extent of their power and authority under the law. They acted, in other words, not "*by virtue*" but "*under color*" *thereof* in the administration of the law.

Having acted in this manner, is it not clear that they were entitled to the protection of the acts of 1833, 1863, 1866, June 25, 1868, and July 27, 1868? Is it not clear that the acts recited would have afforded them not only protection and indemnity, but absolute immunity? All such as these of their acts were accepted, ratified and adopted by these laws of Congress, and became thenceforth acts of state, for which the United States were alone responsible, for they have no partnership liability. Wherever the United States is liable, the officer is exonerated. Wherever he is liable, the United States is not.

That the proceeds of the claimant's cotton were rightfully and legally in the hands of Mellen and Yeatman, is a proposition which we think will not be denied. They were the regularly-constituted officers of the United States to receive this money. They were bonded officers. See third section, act of March 12, 1863.) The second section directed them to sell the property and pay the proceeds into the Treasury of the United States. If they neglected the latter injunction the United States alone could enforce it. If they embezzled, or, as in this case, paid these proceeds to a party who was not and had not been the owner of the property, the latter was wholly without remedy. He could not compel them to pay over the money. He could not maintain actions on the bonds given by them. He is entirely remediless, unless the receipt of the money by the only officers designated by the law to receive it should be regarded as a receipt by the United States. A man who pays his customs or excise duties is not bound to see that they are paid over by the collector into the Treasury of the United States, although those laws require, as in this case, that they should be so paid over. But his debt is discharged when he pays these duties into the hands of the officer designated and appointed by law to receive them. The receipt of the money by the collector, as to him, is a receipt by the United

States. And although this officer should embezzle or misappropriate the money paid, he and his goods are discharged by the payment.

But suppose, in this case, the money had been actually paid over into the Treasury of the United States by the agent, and the Secretary of the Treasury had released them, or the Treasurer had embezzled them, or a robber had stolen them out of the Treasury, would that defeat the action of the owner who had a just and legal claim to them?

Under the act of August 6, 1846, (9 Stats., 59, § —,) the funds in the hands of collectors and others were to be paid over to the subtreasuries and depositaries as often as once in each week. If these agents did not do so, surely that was not the fault of the claimant, nor had he any power or control to enforce obedience to the law.

Nor is there, in our view, anything in the act of March 12, 1863, which conditions the right of the owner to bring this action, upon the performance of the duty enjoined upon the agents to pay the money into the Treasury. The 2d section, after providing for the appropriation of any captured or abandoned property to public use, after due appraisement and certificate, or forwarded to any place of sale within the loyal States, provides that "all sales of such property shalll be at auction to the highest bidder, and the proceeds thereof shall be paid into the Treasury of the United States."

The 3d section then proceeds to direct that the agents shall give bonds, and that these and the securities may be increased and strengthened as circumstances may demand; and that the Secretary shall cause books of accounts to be kept, showing when and from whom such property was received, the cost of transportation, and proceeds of the sale thereof. And then proceeds:

> "And any person claiming to have been the owner of any such abandoned or captured property may at any time within two years after the suppression of the rebellion prefer his claim to the proceeds thereof in the Court of Claims;

and on proof to the satisfaction of said Court of his ownership of said property, of his right to the proceeds thereof, and that he has never given any aid or comfort to the present rebellion, to receive the residue of such proceeds, after the deduction of any purchase money which may have been paid, together with the expense of transportation and sale of said property, and any other lawful expense attending the disposition thereof."

1st. The receipt of the proceeds by the United States, is the foundation of the right and the action, and not their *actual payment* into the Treasury. This receipt is as complete and perfect whenever the sale is made, and the money paid to the agent, as if it were actually in the hands of the United States Treasurer.

2d. The act of March 12, 1863, makes special provision for a case where no money is ever actually received by the United States, and where of course there could be no payment of it into the Treasury.

We refer to where such captured and abandoned property in the hands of an agent, as is needed for public use. In such case it is to be first appraised and a certificate made. This certificate stands in the place of the proceeds. And the owner recovers, not the amount of proceeds, but the amount of the appraisement.

3d. The act of July 27, 1868, § 3, shows clearly that in order to maintain an action in the Court of Claims, under the Captured and Abandoned Property acts, it is unnecessary to show that the property was sold and the proceeds in the Treasury.

For that act provides—

"That the remedy gievn in cases of seizure under said act. by preferring claim in the Court of Claims, should be exclusive, *precluding the owner of any property taken by the agents of the Treasury Department*, as abandoned and captured property, in virtue or under color of said act, from suit at common law, or any other mode of redress whatever, before any court or tribunal other than said Court of Claims."

And provides further—

"In all cases in which suits of trespass, replevin, detinue, or any other form of action may have been brought and are now pending, or shall hereafter be brought against any person, for or on account of private property taken by such person as an officer or agent of the United States, *in virtue or under color* of the act aforesaid, or of the act of July 2, 1864, the defendant may and shall plead or allege in bar thereof, that such was done by him or admitted to be done by him as an officer or agent of the United States in the administration of one of the acts aforesaid, *or in virtue or under color thereof.* And such plea if sustained by the proof, *shall be, and shall be deemed and adjudged in law to be, a complete and conclusive bar to any such suit or action.*"

First. Thus, it will be seen that for every injury done to an owner of such property, by virtue or under color of these acts, he is precluded from suing anywhere, in any court, in any form of action, other than in the Court of Claims. The claim can only be preferred there, *and there only against the United States.*

It must be obvious to the Court at a glance, that many causes of action against these agents and officers would, under these acts arise, where no proceeds ever went into the Treasury; and yet all these are made cognizable by and in the Court of Claims. Wrongful seizure, unjust detention, embezzlement or misapplication of proceeds by the officers and agents, are all assumed here by the United States as their own acts, and responsibility for them incurred and immunity granted to the agent or officer.

Secondly. The after part of the section, to preclude and exclude all doubt, provides for the manner in which such immunity of the officer or agent shall be established and declared.

Not only in actions for the proceeds, but in all "*suits of trespass, replevin, detinue, or any other form of action,*" this same plea is to be available—"*a complete and conclusive bar.*" And such injuries as *trespass, replevin, or detinue* are the appropriate remedies for, preclude all idea of the proceeds of sale being in the Treasury. Yet for these injuries, so committed by these officers, the owner shall have his remedy against the United States alone in the Court of Claims. Not, of course, in an action of trespass or tort; for the United States is never guilty of a wrong. When they assume and stand for those of their agents or officers, it is upon the ground of implied contract—indemnification to the officer, compensation to the injured party.

We cite these provisions now to show that we have brought our suit in the right way, in the proper court, against the only party liable in the premises; and that, from the very nature of the case, this liability is not predicated of the fact that the proceeds are in the Treasury, but the contrary.

Thirdly. That this is the true construction of the acts appears, we think, conclusively by the *proviso* to the third section of the act of July 27, 1868, as follows:

> "*Provided, however,* That no judgment recovered in accordance with this act shall be paid by the United States unless the amount received by the defendant as the proceeds of the transaction which was the foundation of the suit shall have been paid into the Treasury, except upon an appropriation duly made therefor after a full examination of the claim upon its merits."

This *proviso* does not relate, as will be seen, to the payment of judgments obtained against officers and agents, acting in virtue or under color of the captured and abandoned property acts, but had especial reference to "judgments recovered in accordance with this act"—that is, evidently against those officers and agents mentioned in the first section of this act, and to whom the same protection and indemnity was thereby extended, as had been to those under the captured and abandoned property acts, by the act of July 28, 1866, specially referred to. It could not refer to the latter, for by the 3d section these were granted entire immunity from suit, and consequently no judgment could be rendered against them, and therefore totally unnecessary to provide for their payment.

The act of March 3, 1863, provided that suits against revenue officers and agents should be defended by the United States, and where the court certified there was probable cause for the acts, the judgment against such officer was to be paid out of the Treasury.

The act of July 28, 1866, extended these provisions to the agents and officers acting under the captured and abandoned property acts, and made the judgments payable out of the captured and abandoned property fund in the Treasury.

The first section of this act of July 27, 1868, extends these provisions—

> " *To all suits* and proceedings (except those in behalf of the United States) which have been brought, or may hereafter be brought, against any officer or agent of the Government, civil or military, for acts during the rebellion, while acting *by virtue or under color of his office or employment.*"

It is very apparent that the "*officers or agents*" mentioned in this first section, are not those acting under the captured and abandoned property acts. For they had been already fully provided for by the eighth section of the act of July 28, 1866, and the twelfth section of the act of March 3, 1863, previously fully quoted.

The first section extends the same protection generally to all other officers and agents. And it is only for the payment of judgments against such other officers and agents than those acting under the captured and abandoned property acts that are referred to and provided for in this proviso.

The judgments obtained or to be rendered against officers and agents for acts done in virtue or under color of the captured and abandoned property acts had already been fully and amply provided for in the eighth section of the act of July 28, 1866, and the prior act of March 3, 1863. The first act directed the judgments against revenue officers to be paid out of the Treasury generally.

The act of July 28, 1866, section 8, directed that the judments recovered, or to be recovered—

> "Against any officer of the United States or other person by reason of acts or proceedings had by such officer or other person, under authority or color of the acts approved March 12, 1863, and July 2, 1864."

That payment thereof—

> "*Shall be made out of the moneys arising and obtained from the proceeds of sales and leases,*" &c., under the captured and abandoned property acts.

In other words, here is a standing and general appropriation, out of a designated and well-defined fund for the payment of judgments obtained against agents for acts committed against the rights and property of individuals, under these laws.

Then by the third section of the act of July 27, 1868, the United States step in and say, "You shall no longer maintain a suit against these captured and abandoned property agents, for acts done by virtue or under color of these laws. We assume the direct responsibility of those acts. The officer shall be exonerated, and we answer for the same acts in the Court of Claims. If the officer acted in good faith under color of the law, but so as to incur a legal liability, we assume that liability directly instead of indirectly. And payment is already provided for by act of July 28, 1866."

In all this there is nothing that lends support or gives even color to the proposition that in a suit under these laws, in the circumstance of this case, it is essential or even necessary to show that the proceeds of the property were actually paid into the Treasury.

CONCLUSIONS.

We think we have, therefore, maintained our positions—

1st. That these agents acted by virtue or under color of these captured and abandoned property laws.

2d. That they became liable to us as well as to the United States, when they paid our money in their hands to a person who had no right to it.

3d. That the United States, by the acts on the subject, and especially the third section of the act of July 27, 1868, have assumed the direct responsibility of their acts in the premises, and given remedy therefor in the Court of Claims.

4th. That to maintain this action it is not necessary to prove that the proceeds should be actually in the Treasury of the United States.

Very respectfully submitted.

GEORGE TAYLOR,
JOS. CASEY,
Counsel for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

HORATIO N. SPENCER, APPELLANT,
vs.
THE UNITED STATES.
No. 168.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

HORATIO N. SPENCER, APPELLANT,
vs.
THE UNITED STATES.
No. 168.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

STATEMENT OF THE CASE.

Forty bales of cotton belonging to the plaintiff were put into the care of Mrs. Blackburn by the foreman of Mr. Spencer's plantation. That lady, in violation of a promise to take care of it, sent the cotton to Memphis, "where it fell into the hands of Thos. H. Yeatman, special agent of the Treasury Department." Such is the finding of the court, [Record, 5,] not that it was "seized" by Yeatman, as the claimant puts it in his brief; and Yeatman's letter upon the same page of the record declares that it "never was formally seized by any agent of the Government," nor did its proceeds ever reach the Treasury. It was not sold by Supervising-Agent Mellen.

BRIEF.

The various statutes cited by the claimant refer solely to suits brought against individuals, directing what pleas shall be deemed a defense if sustained by proof. The United States can only be sued in such cases and manner as its statutes may indicate. A right to sue is not to be derived by inference drawn from provisions declaring how certain suits may be defeated.

This is a claim for the proceeds of captured or abandoned cotton, if it has any basis against the United States; but it was neither. It was sent to Memphis by Mrs. Blackburn, the person to whose care the claimant's foreman had confided it, for sale; sold there with her consent, she receiving the agreed proportion of the purchase-money, and *not* as abandoned property. It never was *captured*, it never was *abandoned*, within any authorized definition of either of those terms.

If it were, then the jurisdiction of the Court of Claims arises solely under the fourth item of sec. 1059 of the Rev. Stats., p. 196, which does not include cases circumstanced like the present. The remedy is specifically confined to that given by the acts of March 12, 1863, and July 2, 1864; and applies only to the *proceeds* of property paid into the United States Treasury. It does not apply to torts done to person or property by the officers or agents of the United States. (Gibbons *v.* United States, 8 Wall., 269; United States *v.* Crusell, 14 Wallace, 1.)

EDWIN B. SMITH,
Assistant Attorney-General.

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SUPREME COURT OF THE UNITED STATES.

No. 168.

OCTOBER TERM, 1875.

HORATIO N. SPENCER, APPELLANT,

VS.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

Mr. Chief-Justice **WAITE**:

Rule 1, in reference to appeals to this court from the Court of Claims, provides that no case shall be heard here on such an appeal except upon a record containing, among other things, "a finding by the Court of Claims of the facts in the case established by the evidence in the nature of a special verdict."

The finding certified here with this record does not show—

1. Whether the cotton, which is the subject of the action, was received or collected by any agent specially appointed by the Secretary of the Treasury for that purpose, as captured and abandoned property under any act of Congress providing therefor; or—
2. Whether, if so received or collected, it was sold as such, and the proceeds paid to any agent of the United States whose duty
2 it was to accept and transmit the same to the Treasury of the United States.

A determination of these questions of fact may be material to the judgment in the case, and the record is remanded to the Court of Claims for a further finding thereon, to be certified and returned to this court with the record.

True copy. Test:
[SEAL.] (Signed) D. W. MIDDLETON,
Clerk Sup. Court U. S.

Court of Claims.

HORATIO N. SPENCER
vs.
THE UNITED STATES.

Ordered, in this case, that in answer to the rule of the Supreme Court of the United States for a further finding on two questions of fact stated in said rule, it be certified to said court as follows:

In answer to the question “Whether the cotton, which is the subject of
the action, was received or collected by any agent specially
3 appointed by the Secretary of the Treasury for that purpose, as
captured and abandoned property under any act of Congress providing therefor,” it is certified that the said cotton was never formally seized by any agent of the Government as captured or abandoned property; but when it fell into the hands of Thomas H. Yeatman, special agent of the Treasury Department, as stated in the finding of facts, it was by him temporarily detained, under color of office, on account of the complaints of the negroes, who claimed it, as stated in finding 4; and afterwards, with the consent of Mrs. Blackburn and the negroes, and under instructions received from Supervising Agent Mellen, the cotton was sold by Yeatman, and of the proceeds $4,628.49 was paid by him to Mrs. Blackburn, and the remainder, $2,000, was paid over by him to his successor in office, who, by order of said Mellen, sent the same to a special agent of the Treasury at Goodrich Landing, who paid it to said negroes, it being known to said Yeatman at the time of the sale that the cotton was brought to Memphis by Mrs. Blackburn as having been purchased by her from negroes on the claimant's plantation.

In answer to the question “Whether, if so received or collected, it was sold as such, and the proceeds paid to any agent of the United States whose duty it was to accept and transmit the same to the Treasury of the United States,” it is certified that the cotton was sold by Special Agent Thomas H. Yeatman, and the proceeds of the sale were received by him as stated in the preceding answer; it was not sold as captured or abandoned property.

By the court.

A true copy.

In testimony whereof I hereunto set my hand and affix the seal of said Court of Claims this 4th day of April, 1876.

[SEAL.] (Signed) JOHN RANDOLPH,
Asst. Cl'k Court of Claims.